



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**
Sixteenth session
16–27 April 2012

**Consideration of reports submitted by States parties under
article 74 of the Convention**

**Concluding observations of the Committee on the Protection of the
Rights of All Migrant Workers and Members of Their Families**

Tajikistan

1. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families considered the initial report of Tajikistan (CMW/C/TJK/1) at its 188th and 189th meetings (CMW/C/SR.188 and 189), held on 17 and 18 April 2012. At its 201st meeting, held on 26 April 2012, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission, albeit late, of the State party's initial report and appreciates the constructive dialogue held with the high-level delegation. The Committee thanks the State party for its detailed replies to the list of issues and the additional information provided by the delegation.

3. The Committee notes that the countries in which most Tajik migrant workers are employed are not yet parties to the Convention, which constitutes an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

4. The Committee welcomes the contributions made by civil society organizations in connection with the Committee's consideration of the initial report of Tajikistan.

B. Positive aspects

5. The Committee welcomes the adoption of several legislative measures and Government decisions and orders:

(a) The Joint Order of the Ministry of Internal Affairs and the Ministry of Education on education of migrant workers in vocational training initiatives in 2010;

- (b) The Labour Protection Act, 2009;
 - (c) The Government decision approving the regulations of the Ministry of Internal Affairs Office for Migration to the Russian Federation, 2007;
 - (d) The Government decision on the Programme of International Labour Migration for Tajik citizens (2006–2010); and
 - (e) The Human Trafficking Act, 2004.
6. The Committee welcomes the institutional and policy measures taken by the State party in the field of migration, including:
- (a) The National Strategy on International Labour Migration of Tajikistan citizens for 2011-2015; and
 - (b) The establishment of the Migration Service in 2011.
7. The Committee also welcomes the conclusion by the State party of bilateral and multilateral agreements related to migrant workers, including:
- (a) The Convention on the Legal Status of Migrant Workers and their Families, adopted by the member States of the Commonwealth of Independent States in 2008;
 - (b) The Agreement between the Government of Tajikistan and the Government of Kazakhstan on the employment of Tajik citizens working temporarily in Kazakhstan and of citizens of Kazakhstan working temporarily in Tajikistan and protection of their rights, 2006;
 - (c) The Agreement between the Government of Tajikistan and the Government of the Russian Federation on the employment of Tajik citizens in the Russian Federation and of citizens of the Russian Federation in Tajikistan and protection of their rights, 2004.
8. The Committee welcomes the ratification since the entry into force of the Convention for the State party of the following international treaties:
- (a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2002;
 - (b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2002;
 - (c) International Labour Organization (ILO) Convention No. 97 (revised, 1949) concerning Migration for Employment in 2007;
 - (d) ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers in 2007;
 - (e) ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in 2005;
 - (f) The United Nations Convention against Transnational Organized Crime in 2002;
 - (g) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2002;
 - (h) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime in 2002.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

9. The Committee notes that the State party is in the process of adopting new legislation to regulate migration from and to the country. However, it notes with concern that the draft Law on Labour Migration of Tajik Nationals Abroad uses terminology such as “illegal migrant” which is not compatible with the Convention and the General Assembly resolution 3449 (XXX) of 9 December 1975. It is also concerned that the draft law contains provisions that restrict the right of citizens to leave the State party and that it imposes obligations on its citizens to obtain professional qualifications before migrating abroad and to provide material support to their families through remittances. The Committee also notes that the draft Law on Private Recruitment Agencies has significant gaps in relation to implementation mechanisms and mechanisms to protect the rights of migrants who are recruited through employment agencies.

10. The Committee recommends that the State party consider amending the draft Law on Labour Migration of Tajik Nationals Abroad to ensure that it is fully in line with the Convention, namely by using the terminology “migrants in an irregular situation” and lifting restrictions to leave the country, and the draft Law on Private Recruitment Agencies in order to provide for mechanisms of implementation and protection of the rights of migrants. The Committee encourages the State party to accelerate the adoption of the draft laws thus amended.

11. While acknowledging the adoption of the National Strategy on International Labour Migration of Tajik citizens for 2011–2015, the Committee regrets that the strategy does not contain provisions on the reintegration of Tajik migrant returnees, including for providing them with employment opportunities.

12. The Committee recommends that the State party take measures to develop the strategy further in order to include provisions on the reintegration Tajik migrant returnees, including for providing them with employment opportunities.

13. The Committee notes that Tajikistan has not yet made the declarations provided for in articles 76 and 77 of the Convention, whereby it would recognize the competence of the Committee to receive communications from States parties and individuals.

14. The Committee invites the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.

15. The Committee notes that Tajikistan has not yet become party to ILO Convention No. 181 (1997) concerning Private Employment Agencies and the ILO Convention No. 189 (2011) concerning decent work for domestic workers.

16. The Committee invites the State party to consider ratifying ILO conventions Nos. 181 and 189.

Data collection

17. The Committee takes note of the efforts made to improve data collection, in particular on the issuance of migration cards for Tajik citizens travelling abroad and on the ongoing work on the development of a migration database on the basis of such migration cards. However, it regrets the lack of information on the criteria used to evaluate the level of implementation of the Convention, in particular with regard to migrant women, unaccompanied migrant children and migrants both in and from the State party.

18. **The Committee recommends that the State party step up its efforts to ensure that the data collection system takes into account all aspects of the Convention, and encourages the State party to collect information and statistical data, disaggregated by sex, age, nationality and fields of occupation. When precise information is not available, e.g. on migrant workers in an irregular situation, the Committee would appreciate receiving data based on studies or estimates.**

Training on and dissemination of the Convention

19. The Committee notes with satisfaction that the Convention has been translated into Tajik and published in both Tajik and Russian and welcomes the State party's efforts to organize awareness-raising campaigns and training to protect and support migrant workers who leave the State party. However, it regrets that training programmes organized in cooperation with international organizations and civil society often have an ad hoc character and that there is no information showing that the State party has developed and implemented systematic and regular training on the content of the Convention for relevant public officials, civil society organizations and potential migrant workers.

20. **The Committee recommends that the State party develop and implement systematic and regular training on the content and application of the Convention for public officials dealing with migrant workers, such as judges, prosecutors, police officers, immigration and emigration officials, especially officials of the Migration Service, labour inspectors and social workers, including at the local level. The Committee also recommends that the State party ensure that migrant workers have access to information on their rights under the Convention, and collaborate with civil society organizations in promoting and disseminating information on the Convention.**

Corruption

21. The Committee is concerned about information received that migrant workers and members of their families leaving and entering the State party allegedly often become victims of corruption. Certain customs and border officials are reportedly involved in extorting money for services that are normally free of charge. The Committee is also concerned about reports of corruption among the staff of the State party's consulates in some countries of employment.

22. **The Committee recommends that the State party take immediate measures to address any instances of corruption, particularly in some consulates in countries of employment, and inquire into allegations of corruption by some customs and border officials who are allegedly involved in extorting money or receiving bribes. It also recommends that the State party conduct information campaigns, with a view to encouraging migrant workers and members of their families who claim to be victims of corruption to report that corruption and raise awareness among migrant workers and members of their families as to which services of customs and border officials are free of charge.**

2. General principles (arts. 7 and 83)

Right to an effective remedy

23. The Committee notes the establishment of the State party's Migration Service which regulates migration-related matters and is mandated to deal with complaints received from migrant workers and members of their families both in the State party and abroad. It is nevertheless concerned that the Migration Service lacks financial and human resources to carry out its tasks, as well as clear procedures for receiving and examining complaints from migrant workers and monitoring the situation of Tajik migrant workers who are detained in

the main countries of employment. The Committee also notes with concern that foreign migrant workers in the State party often lack trust in its law enforcement agencies and courts and are unaware of other available remedies.

24. **The Committee recommends that the State party:**

(a) **Provide necessary financial and human resources to the Migration Service in order to ensure that it addresses migration-related matters in a timely and efficient manner;**

(b) **Establish clear complaint procedures of the Migration Service, which should be easily accessible to all migrant workers and members of their families in and from the State party;**

(c) **Strengthen its cooperation with the law enforcement agencies of the main countries of employment of Tajik migrant workers in order to provide better protection for its citizens and to ensure that the situation of Tajik migrant workers and members of their families, who are held in detention, is effectively monitored;**

(d) **Ensure that, in law and in practice, migrant workers and members of their families in the State party, including those in an irregular situation, have equal opportunities as nationals to file complaints and obtain effective redress in the courts and that they have access to information about other available remedies.**

3. **Human rights of all migrant workers and members of their families (arts. 8–35)**

25. The Committee notes with concern that both the Law on Migration of 1999 and the new draft Law on Labour Migration of Tajik Nationals Abroad contain restrictions on the right to leave the State party of citizens who possess information constituting State secrets or other secrets protected by law. The new draft law also restricts the right to leave the State party for persons who are “incapable”.

26. **The Committee recommends that the State party ensure that Tajik migrant workers and members of their families are free to leave and enter the State party and are not subjected to any restrictions except for those permitted under article 8 of the Convention.**

27. The Committee is concerned about information that the amendments to the Family Code made in 2011 restrict the right of foreign and stateless persons, including migrant workers, to marry Tajik citizens, by granting this right only to those who have legally resided in the State party for at least one year and by requiring a mandatory prenuptial agreement whereby the foreign or stateless spouse is obliged to provide his or her Tajik spouse and children with a dwelling, without having the right to acquire real estate property.

28. **The Committee recommends that the State party take the necessary measures, including legislative amendments, to ensure the right of foreign and stateless migrant workers and members of their families to marry Tajik nationals and to acquire real estate property.**

29. The Committee notes that the Law on Advocates of 4 November 1995 ensures that foreigners, including migrant workers, have equal access to legal aid. However, it regrets that the State party did not provide information on cases where foreign migrant workers, especially those in an irregular situation, have received free legal aid.

30. **The Committee requests that the State party provide in its next periodic report information on cases where migrant workers in an irregular situation have received free legal aid.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)

31. The Committee notes that the Migration Service is responsible for providing counselling to potential migrant workers on the employment conditions in countries of employment. It is concerned that such counselling services are provided only in the office of the Migration Service in Dushanbe, as its regional offices lack the necessary staff and resources. The Committee is also concerned that the website of the Migration Service is not updated and that the existing information is not available in languages that foreign migrant workers in the State party understand.

32. The Committee recommends that the State party consider increasing the financial and human resources of the regional offices of the Migration Service and organize training for migrant workers and members of their families on employment laws and practices in countries of employment. It also recommends that the State party ensure that the website of the Migration Service is regularly updated and that information is also provided in English and Pashto.

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)

33. While noting the State party's efforts to cooperate and consult with the main employment countries of Tajik migrant workers, in particular the Russian Federation, the Committee regrets that it has not been able to conclude a bilateral social security agreement with the Russian Federation covering migrant workers and members of their families.

34. The Committee encourages the State party to reinforce its efforts to conclude social security agreements allowing migrant workers and members of their families to receive social security benefits, as well as to develop a common migration strategy, with the Russian Federation and other countries of employment. The Committee further recommends that the State party consider ratifying the ILO Convention No. 118 (1962) concerning Equality of Treatment of Nationals and Non-Nationals in Social Security.

35. The Committee notes with concern that only a small percentage of migrant workers benefit from the services of public recruitment agencies and that most of them rely on private recruitment agencies and the support of the diaspora.

36. The Committee recommends that the State party improve the efficiency of public recruitment agencies and closely monitor the activities of private recruitment agencies, with a view to preventing irregular migration of Tajik nationals.

37. The Committee is concerned about reports that Tajik migrant workers and members of their families suffer from discriminatory attitudes and are often targets of hate crimes and xenophobic assaults in the main countries of employment, in particular in the Russian Federation. The Committee is particularly concerned about reports confirming that Tajik migrant workers are frequently subjected to violence, abuse, threats and intimidation by employers, public officials and private individuals in countries of employment. Those who are in an irregular situation are often held in detention centres in prison like conditions for several months or, in the absence of identity documents, for up to one year.

38. The Committee recommends that the State party provide assistance to Tajik migrants who are victims of discrimination, violence and prolonged detention in countries of employment. It recommends that the State party cooperate with the main countries of employment, with a view to promoting the investigation, prosecution and sentencing of perpetrators of crimes against Tajik migrants. It also recommends that the State party raise awareness among its nationals about the potential risks of migration.

39. The Committee notes with concern the high number of deaths of Tajik migrant workers in the main countries of employment, especially in the Russian Federation, reportedly caused by illness, accidents or homicide. It is concerned about the low number of investigations into the causes of death, and the lack of information on prosecutions and sanctions imposed on murderers.

40. **The Committee recommends that the State party take measures to step up its cooperation with the law enforcement agencies of the main countries of employment of Tajik migrant workers in order to investigate the causes of deaths of its citizens and to ensure that murderers of Tajik migrants are prosecuted and punished.**

41. The Committee notes that, in addition to its embassy and consulates, the State party also operates honourable councils in main cities of the Russian Federation. The Committee is concerned at reports that the services of those councils are considered expensive and ineffective by Tajik migrant workers, and that there is a lack of consular support and protection for Tajik migrants outside the main cities in the Russian Federation.

42. **The Committee recommends that the State party consider increasing the human and financial resources allocated to its embassy and consulates in the Russian Federation in order to strengthen consular support and protection for its nationals. It also recommends that the State party review the service fees charged by honourable councils in order to ensure that they are accessible for Tajik migrant workers and their families.**

43. The Committee takes note that the State party is in the process of developing a draft Law on Private Recruitment Agencies. However, it remains concerned about reports that Tajik migrant workers employed through licensed private recruitment agencies are often subjected to forced labour and servitude in countries of employment. It is concerned that such agencies often give false or incomplete information about the employer, the nature of work and payment, and that they reportedly enjoy impunity both in the State party and in the countries of employment. The Committee regrets that the State party did not provide information on prosecutions and sanctions imposed on responsible staff of private recruitment agencies involved in illegal activities.

44. **The Committee recommends that the State party closely monitor and investigate private recruitment agencies which are involved in cases where Tajik migrant workers are subjected to forced labour or servitude in countries of employment. It urges the State party to prosecute the responsible staff of such agencies under the crime of human trafficking and to cooperate with the authorities of countries of employment in order to facilitate the return of Tajik migrants who are victims of such practices. It requests the State party to provide in its next periodic report detailed information on the activities of private recruitment agencies, the number of prosecutions, investigations and on the sanctions imposed on private recruitment agencies and their staff involved in illegal activities.**

45. In the light of the considerable number of deaths of Tajik migrant workers and members of their families abroad, the Committee regrets the absence of standardized procedures and regulations to facilitate the return of the bodies of the deceased.

46. **The Committee recommends that the State party establish effective procedures and regulations and allocate adequate resources for the repatriation to the State party of the bodies of deceased Tajik migrant workers and members of their families and facilitate such repatriation. The Committee requests the State party to include information about such procedures and regulations in its second periodic report.**

6. Follow-up and dissemination

Follow-up

47. The Committee requests the State party to include in its second periodic report detailed information on the measures taken to give effect to the recommendations contained in the present concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government, the Parliament and the judiciary, as well as to relevant local authorities.

48. The Committee encourages the State party to involve civil society organizations in the preparation of the State party's second periodic report.

Dissemination

49. The Committee likewise requests the State party to disseminate the present concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Tajik migrants abroad and to foreign migrant workers residing or in transit in the State party.

7. Next periodic report

50. The Committee requests the State party to submit its second periodic report by 1 May 2017.
